United Nations A/HRC/25/NGO/86

General Assembly

Distr.: General
27 February 2014

English only

Human Rights Council
Twenty-fifth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Joint written statement* submitted by the People's Solidarity for Participatory Democracy and MINBYUN-Lawyers for a Democratic Society, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Democratic oversight of the National Intelligence Service of the Republic of Korea*

After the National Intelligence Service (NIS) of the Republic of Korea illegally intervened in the last presidential elections in 2012, civil society organisations of the Republic of Korea have called upon the government to conduct a transparent and independent investigation, and establish mechanisms to prevent recurrence. Among all, excessive scope of mandate and power of the NIS, arbitrary use of its power and intervention in domestic politics and lack of democratic control of the NIS have been pointed out as major problems. It is crucial to establish democratic oversight mechanisms and minimise the mandate of the NIS to prevent illegal and political abuse which has led to a potential inbred abuse of State power.[1]

Several state agencies including the NIS, Cyber Command of the Ministry of National Defence and Ministry of Patriots and Veterans Affairs illegally intervened in the last presidential election in 2012 to support the then ruling party. The NIS even operated a psychological operations division consisting of around 70 staff, as well as civilians, and intentionally created negative public opinion on the Internet by posting several articles and retweeting comments that slandered opposition party candidates while supporting ruling party candidate during the election.[2] In February 2014, the prosecutors' office confirmed that at least 786,000 messages had been posted or retweeted from 1,157 Twitter accounts belonging to members of the NIS psychological operations division.[3] As a result, a former director of the NIS and some senior staff have been indicted and gone under trial. The National Assembly established a Special Commission on Reforming the NIS.

We express our grave concerns that the investigation process on this case is not transparent and independent while cover up and interfering investigation is ongoing. Individuals are not absolved of criminal responsibility for serious human rights violations by virtue of having been requested to undertake an action by a superior.[4] Nevertheless, the prosecutors' office suspended or dropped indictments on relevant staff who were directly involved in the illegal intervention in the presidential election, under the reason that these staff just followed their superiors' order. The current director of the NIS, Mr. Jae-joon NAM, argued that it was a part of 'legitimate internal psychological warfare', and ordered NIS staff not to cooperate with the prosecutors' investigation, and even provided legal fees for some staff that went under trial. On the other hand, he took disciplinary action against whistleblowers who revealed the facts about illegal intervention in the election by the NIS.

We deplore that the current system and operation of the NIS in the Republic of Korea is far from good practice as presented by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in 2010.[5] This is the root cause of illegal political intervention by the NIS and following non-transparent investigation.

The NIS is a single agency for security and intelligence which deals with both foreign and domestic information at its own discretion. As a secret information institute, it has a mandate to investigate cases related to national security, especially for those cases related to the Democratic People's Republic of Korea(DPRK), and has an execution power such as planning and coordination among government bodies on the issues related to national security. In addition to this, the NIS is performing anti-DPRK and internal psychological warfare without any legal grounds.

---

[1] 71s Plenary Session of the Venice Commission, Report on the Democratic Oversight of the Security Services, 11 June 2007, para. 5
[2] People's Solidarity for Participatory Democracy, Republic of Korea: Illegal Intervention by State Agencies in the Presidential Election, 11 December 2013, http://www.peoplepower21.org/English/1128957
[3] The Hankyoreh, NIS could have posted 22 million political messages online, 6 December 2013, http://english.hani.co.kr/arti/english_edition/e_national/614300.html. In December 2013, the prosecutor's office identified 22 million messages from 2,653 Twitter accounts, but in February, they reduced the number in the indictment, saying that they did not count the twitter messages which seem to be written by 'outside supporters' of the NIS.
[4] 14th Session of the UN Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/14/46, 17 May 2010, Para. 24
[5] *Ibid*

First, the NIS of the Republic of Korea have a mandate to directly investigate, arrest and detain a person for cases related to national security under the National Security Act, even though the function of intelligence services should be limited to the collection, analysis, and dissemination of information.[6] As mentioned above, the NIS also has an executive power of planning and coordination among government bodies on the issues related to national security. 'Background check' by the Ministry of Security and Public Administration, 'Censorship and Investigation of theatric works and films', 'Psychological operation against the DPRK' by the Ministry of Culture, Sports and Tourism are typical examples of the executive power of the NIS.

Second, the mandates of intelligence services should be narrowly and precisely defined in a publicly available law to prevent the abuse of its mandate, which is highly possible based on its nature to legally perform illegal activities.[7] Instead of utilizing good practice, a scope of mandate defined in the National Intelligence Service Act is very vague and broad, and the NIS performs activities not based on the law but of presidential decree (eg. provision of security operation, the act of adjustment planning for provisions of security and information operation) and regulations (eg. the guideline of counter-terrorism, the national cyber security management regulation). Scope and content of "regulations" which can be established arbitrarily by the director of the NIS is also too exclusive which threats actual constitutionalism of the country which is guaranteed by the Constitution of the Republic of Korea.

Third, the intelligence services should not engage in any political activities and abuse of its power to violate human rights or legitimate political actions.[8] Even though the National Intelligence Service Act Article 9 prohibits involvement in politics, political intervention by the NIS is common practice in reality.[9] Even today, where the NIS is going under trial for its illegal intervention in the presidential election, it argues that it was a 'legitimate internal psychological warfare' to protect 'people from being contaminated' from psychological warfare by the DPRK. In addition to supporting or slandering politicians, the NIS posted comments criticizing civil society organizations which have dissented views from the government such as No Jeju Naval Base campaign, Korean Confederation of Trade Unions and Korean Teachers and Education Workers Union.[10] This shows that the NIS has been abusing its power to violate the human rights and systematically narrowing the space of human rights defenders who legitimately claim for their rights.

Fourth, the institutions responsible for addressing complaints and claims for effective remedy arising from the activities of intelligence services should be independent of the intelligence services and the political executives. Such institutions should have full and unhindered access to all relevant information, the necessary resources and expertise to conduct investigations, and the capacity to issue binding orders.[11] However, when the NIS violates human rights such as illegal surveillance, it is hard to expect a transparent investigation. The NIS itself holds investigation rights against its own staff and if other investigative agencies want to detain the NIS staff, they should notify the director of the NIS in advance which makes it difficult to conduct an independent and transparent investigation.[12] Even if someone files a complaint on human rights violation by the NIS to the National Human Rights Commission of Korea (NHRCK), the NHRCK cannot fully access the information for deliberation and their decision is not legally binding.

Lastly, even though the NIS has excessive power as described above, democratic control mechanism by the judicial, legislative and administrative bodies are not strong enough. The Intelligence Committee was established in the National Assembly to monitor works of the NIS but members of the Intelligence Committee have additional positions in other Committees. Meetings are not public and limited information is disclosed due to confidential information protection and members cannot get support from expert groups or advisors. In addition, the NIS dispatched Information Officers to state agencies including the National Assembly to surveil. It is known that these Information Officers monitor and report situation of the National Assembly and carry out surveillance. According to the Protection of Communications

[6] *Ibid*, practice 1, para. 9
[7] *Ibid*, practice 1-5
[8] *Ibid*, practice 12
[9] National Intelligence Service Act Article 9. Prohibition of Involvement in Politics
[10] The Hankyoreh, Another state agency found interfering in elections, 15 October 2013, http://english.hani.co.kr/arti/english_edition/e_national/607129.html
[11] *Supra* note 5, practice 10
[12] National Intelligence Service Employees Act, Article 23, Investigation on employees

Secrets Act, the NIS requires a court warrant when wiretapping on local people,[13] but the scope of wiretapping is excessively broad, such as whole Internet packet by using deep packet inspection, and annually the NIS wiretapping consists of at most 98.5% of all wiretapping among all intelligence and investigative agencies.[14]

We call upon the government of the Republic of Korea:

- To conduct a independent and transparent investigation on the illegal intervention of state agencies in the election by appointing an independent special prosecutor team;
- To take legal action against those who ordered and conducted human rights violations to end impunity;
- To abolish its duty to collect, compile and distribute domestic public security information and to prohibit its involvement in domestic politics;
- To abolish investigative rights of the NIS and transfer it to other investigative agencies;
- To abolish the psychological operation function of the NIS;
- To establish mechanisms in the judicial and legislative bodies to strictly monitor works of the NIS to prevent human rights violations of local people and foreigners during its operations, especially when surveilling and wiretapping;
- To enforce monitoring power of the National Assembly to make the NIS operate within a democratic scope.

---

*Catholic Human Rights Commission, Korea Alliance for Progressive Movement, Korean Progressive Network Jinbonet NGO(s) without consultative status, also share the views expressed in this statement.

[13] Protection of Communications Secrets Act Article 7 (Communication-Restricting Measures for National Security) (1) 2: Approval shall be obtained from the President in writing with respect to communications of countries hostile to the Republic of Korea, foreign agencies or groups and foreign nationals under suspicion of antinational activities, or members of groups within the Korean Peninsula in effect beyond the sovereignty of the Republic of Korea and their umbrella groups based in foreign countries, and in the event of the proviso of paragraph (1)1.

[14] Statistics provided by the Ministry of Science, ICT and Future Planning (since 2013), the Korea Communications Commission(2008–2012), the Ministry of Information and Communication(2000–2007)